

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LEON R. MILES,

Plaintiff,
v.
Case No. 2:06-cv-19
UNKNOWN FOUNTAIN, et al.,
HON. GORDON J. QUIST
Defendants.

**OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action. The Report and Recommendation was duly served on the parties. The Court has received objections from the defendants. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made.

Defendants urge the court to ignore the Sixth Circuit's most recent decision and apply the total exhaustion rule. *Spencer v. Bouchard*, 449 F.3d 72 (6th Cir. 2006), requires the court to apply a partial exhaustion rule.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #23) is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that defendants' motion to dismiss (Docket #6) is GRANTED IN PART AND DENIED IN PART. Defendant Dodds only is DISMISSED from this action without prejudice. Plaintiff's motion for sanctions (Docket #18) and motion for summary judgment or for a jury trial (Docket #22) are DENIED.

FINALLY, IT IS ORDERED that plaintiff's motion for default judgment (Docket #25) is DENIED.

Dated: December 13, 2006

/s/ Gordon J. Quist

GORDON J. QUIST
UNITED STATES DISTRICT JUDGE